186 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
Allison Clements and Mark C. Christie.

AEP Oklahoma Transmission Company, Inc. Public Service Company of Oklahoma	Docket Nos. ER18-194-005 ER18-195-005
Arkansas Electric Cooperative Corporation, *et al.*	
v.	EL23-71-000
Public Service Company of Oklahoma, *et al.*	

ORDER ON FORMAL CHALLENGE AND COMPLAINT AND DIRECTING A COMPLIANCE FILING

(Issued January 18, 2024)

1. On May 25, 2022, as revised on June 2, 2022, AEP West Transmission Companies (AEP Oklahoma Transmission Company, Inc. and AEP Southwestern Transmission Company, Inc.) filed annual informational filings in Docket No. ER18-194-000 that detail the true-up calculations of the charges for the 2021 rate year under their transmission formula rates in the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff).

2. On May 25, 2022, as revised on June 2, 2022, AEP West Operating Companies (Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO)) filed annual informational filings in Docket No. ER18-195-000 that detail the true-up calculations of the charges for the 2021 rate year under their

transmission formula rates[1] in the SPP Tariff.[2] The order refers to AEP West Operating Companies and AEP West Transmission Companies as AEP West.

3. On May 22, 2023, in Docket Nos. ER18-194-005, ER18-195-005, and EL23-71-000, Arkansas Electric Cooperative Corporation (Arkansas Electric), East Texas Electric Cooperative, Inc. (ETEC), Northeast Texas Electric Cooperative, Inc. (NTEC), and Golden Spread Electric Cooperative, Inc. (Golden Spread) (together, Joint Customers), filed a formal challenge to the 2022 Annual Update pursuant to section 5 of the Protocols[3] and a complaint under section 206 of the Federal Power Act (FPA) (together, Formal Challenge and Complaint).[4]

4. As discussed below, we grant in part, and deny in part, the Formal Challenge, and direct AEP West to submit a compliance filing within 60 days of the date of this order. We also find that we need not address the alternative Complaint as it raises the same arguments as in the Formal Challenge.

I. Background

A. Formal Challenge and Complaint

5. Following AEP West's 2022 Annual Update, Joint Customers submitted a Preliminary Challenge on March 20, 2023. AEP West responded to the Preliminary Challenge on April 19, 2023. AEP West and Joint Customers agreed to extend the 270-day review period afforded by the Protocols and on May 22, 2023, Joint Customers filed this Formal Challenge and Complaint with the Commission. In the Formal Challenge and Complaint, Joint Customers claim that AEP West improperly: (1) changed methods for calculating accumulated deferred income taxes (ADIT) related

---

[1] The terms AEP West Operating Companies and AEP West Transmission Companies each have their own transmission formula rate templates and implementation protocols contained in Addendum 4 and 12, respectively, of Attachment H to the SPP Tariff. The Formula Rate consists of the formula rate templates and formula rate implementation protocols (Protocols), which are substantially the same for the AEP West Transmission Companies and AEP West Operating Companies.

[2] Herein, 2022 Annual Update refers to AEP West's true-up calculations for the charges for the 2021 rate year.

[3] SPP, OATT, Sixth Revised Vol. No. 1, attach. H, add. 4 (AEP), pt. 2 (4.0.0), § 5(d); SPP, OATT, Sixth Revised Vol. No. 1, attach. H, add. 12 (AEP Transco) pt. 2 (2.0.0), § 5(d).

[4] 16 U.S.C. § 824e.

to net operating losses that inflated AEP West's combined annual transmission revenue requirement (ATRR) for its 2021 rates; and (2) included several types of expenses in Account 928 (Regulatory Commission Expense).

A. <u>ADIT and Net Operating Losses</u>

6. Deferred tax liabilities and assets are known as ADIT. ADIT balances are accumulated on the regulated books and records of such regulated companies based on the requirements of the Uniform System of Accounts (USofA).[5] ADIT arises from timing differences between the method of computing taxable income for reporting to the Internal Revenue Service (IRS) and the method of computing income for regulatory accounting and ratemaking purposes.[6] That is, a utility's accumulated deferred tax liabilities reflect tax dollars collected from customers but not yet paid by the utility, while accumulated deferred tax assets reflect tax dollars paid by the utility but not yet collected from customers in rates.

7. Deferred tax assets are also created when there is a carryover of net operating losses that are available to offset income earned in future tax years. A net operating loss for income tax purposes results when an entity has not realized the cash benefits or tax savings associated with all of its available tax deductions. Depending on the year in which the net operating loss occurred, the net operating loss may be carried back to prior tax years to offset taxable income or carried forward to future tax years and used to reduce taxable income in those future tax years [7]

8. A net operating loss carryforward is created when tax deductions exceed taxable income, and the associated net operating loss cannot be carried back to reduce taxable income in tax years prior to the year the net operating loss originated. When a net operating loss is carried forward, an ADIT asset must be recorded in Account 190, until the net operating loss is used to reduce taxable income in the future. As the net operating

---

[5] *See* Definition of Accounts 182.3 and Account 254, 18 C.F.R. part 101 (*Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*).

[6] *See Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, 165 FERC ¶ 61,115, at P 3 (2018); 18 C.F.R. § 35.24(d)(2).

[7] *See Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254, at 31,522, 31,530 (1981), (cross-referenced at 15 FERC ¶ 61,133), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982); (cross-referenced at 18 FERC ¶ 61,163); 18 C.F.R. § 35.24(d)(1) (2022).

loss is used in future tax years to offset future taxable income, the ADIT asset is reduced by the amount of the net operating loss utilized on the tax return times the currently-enacted tax rate.

9. The Internal Revenue Code allows a holding company system to file consolidated federal income tax returns.[8] American Electric Power Company, Inc. (AEP) files a consolidated tax return for its companies, including the AEP West Companies. Filing a consolidated tax return allows that loss to offset income received by other member companies for purposes of calculating group taxable income. To the extent the group cannot fully utilize the tax benefit of net operating losses in the year they are generated, the group can utilize them as net operating loss carryforwards in following years.

10. Within the AEP consolidated tax group, group members (including AEP West) are compensated at the time their net operating loss, or the net operating loss carryforward, is used to offset income generated by another group member in the consolidated tax return.

B. Opinion No. 173

11. In Opinion No. 173, the Commission addressed the methodology for allocating the tax liability or savings realized by a group filing a consolidated tax return.[9] To determine the income taxes attributable to the individual members of a consolidated group, the Commission uses a "benefits and burdens" test, which allocates those tax benefits to offset expenses whose burden was borne by the individual member's ratepayers.[10]

12. The Commission explained that, under this so-called "stand-alone" allocation method, a utility's "tax allowance should not be based on the activities of others in the affiliated group but instead, like other costs, should be based on the activities of the [entity] itself."[11] In this regard, the Commission explained that "the test is whether the expenses that generate the deduction are used to determine the jurisdictional service's

---

[8] *Columbia Gulf Transmission Co.*, Opinion No. 173, 23 FERC ¶ 61,396, at n.3 (*Columbia Gulf*), *reh'g denied*, 24 FERC ¶ 61,258 (1983), *aff'd sub. nom. City of Charlottesville v. FERC*, 774 F.2d 1205 (D.C. Cir. 1985).

[9] *Columbia Gulf*, 23 FERC ¶ 61,396.

[10] *See City of Charlottesville v. FERC*, 774 F.2d at 1217 (assigning tax benefits (deductions) attributable to expenses whose burden was borne by the ratepayers requires inquiry as to whether the customers of a regulated entity contributed to the expenses which created the loss deductions of the affiliate in the consolidated tax group).

[11] *Columbia Gulf*, 23 FERC at 61,857 (internal quotations omitted).

rates," and where they are, it then allocates to the jurisdictional service those deductions which were generated by expenses incurred in providing that service.[12]

13. The Commission explained that, despite the similar terminology, the "stand-alone" allocation method is different from the "separate return" method; the latter methodology assumes that the tax allowance should be equal to the tax the jurisdictional utility would pay if it filed a separate return. A separate return method ignores the consolidated tax return and reflects in the tax allowance none of the tax reducing benefits the group realizes from filing a consolidated tax return.[13]

II. Notice and Responsive Pleadings

14. Notice of the Formal Challenge and Complaint was published in the *Federal Register*, 88 Fed. Reg. 35,866 (June 1, 2023), with interventions or protests due on or before June 21, 2023. None was filed.

15. On June 13, 2023, Joint Customers filed a motion to remove privileged status from certain documents that Joint Customers included as attachments to its Formal Challenge and Complaint.

16. On June 21, 2023, AEP West filed an answer to the Formal Challenge and Complaint. On July 11, 2023, Joint Customers filed an answer to AEP West's answer.

17. On July 25, 2023, the General Counsel of the Commission issued a letter finding that the documents no longer qualify for privileged treatment and that Joint Customers should file an unredacted public version of their Formal Challenge and Complaint.

18. On July 26, 2023, AEP West filed an answer to Joint Customers' answer.

19. On July 28, 2023, Joint Customers filed an unredacted public version of their Formal Challenge and Complaint.

20. On August 10, 2023, Joint Customers filed an answer to AEP West's answer.

---

[12] *Id.*

[13] *Id.* at 61,852.

III. Discussion

A. Procedural Matters

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Joint Customers' and AEP West's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. ADIT Treatment Related to Net Operating Losses and Net Operating Loss Carryforwards

a. Formal Challenge

22. According to Joint Customers, in the transmittal sheet to AEP West's 2022 Annual Update, AEP West disclosed that it incorporated an ADIT-related net operating loss adjustment based on its implementation of the stand-alone allocation method.[14] Joint Customers argue that contrary to AEP West's claim, AEP West is not using a stand-alone allocation method, and is instead using a separate return method that is prohibited by the Commission.[15] Joint Customers allege that AEP West's net operating loss adjustments result in inputs to the Formula Rate that unjustly and unreasonably inflate AEP West's combined ATRR for 2021 by approximately $22,236,082.[16]

23. Specifically, Joint Customers argue that AEP West included net operating loss adjustments as inputs to Accounts 190 (Accumulated Deferred Income Taxes), 282 (Accumulated Deferred Income Taxes - Other Property), and 283 (Accumulated Deferred Income Taxes - Other) on its ADIT Worksheets C-1 and C-2. Those accounts provide end-of-year detail of ADIT balances and beginning-of-year detail of ADIT balances, respectively. Joint Customers contend that the net operating loss adjustments that AEP West made to each account resulted in debit ADIT inputs, meaning that the adjustment included in Account 190, an asset account, increased the total debit balance of all ADIT in Account 190, and the adjustment included in Accounts 282 and 283, liability accounts, decreased the total credit balances of all ADIT in Accounts 282 and 283. According to Joint Customers, the total ADIT liability account balances that AEP West used to reduce rate base are greater than the total ADIT asset account balances used to increase rate

---

[14] Formal Challenge and Complaint at 11.

[15] *Id.* at 2, 12.

[16] *Id.* at 2.

base. Joint Customers argue that AEP West's net operating loss adjustments decreased the total net ADIT balance used to reduce rate base, which caused rate base, the return on rate base, and the income tax gross-up for return on rate base to increase.[17]

24. According to Joint Customers, the AEP West companies participate in a tax sharing agreement. Joint Customers assert that a company with a loss receives a current payment from the holding company to the extent that the loss is offset by affiliate income within the consolidated group.[18] Joint Customers argue that, as of December 31, 2020, AEP West's net operating losses had been claimed and fully utilized on AEP's consolidated tax returns and that AEP West received tax sharing cash payments from AEP affiliates for the affiliates' use of AEP West's net operating loss.[19]

25. Joint Customers contend that AEP West's method erroneously ignores those tax sharing cash payments AEP West realized from AEP affiliates for the affiliates' use of AEP West's net operating loss on the AEP consolidated tax returns.[20] Joint Customers argue that under the Commission's stand-alone allocation method, the results of the consolidated tax return may not be ignored.[21] Further, according to Joint Customers, with a stand-alone allocation method, the benefits and burdens of the affiliates add up to the consolidated tax return. Joint Customers assert that, with a separate return method, the benefits and burdens for the affiliates add up to a higher revenue requirement because the benefit of a combined tax return is not realized. Joint Customers argue that AEP West's adjustments result in a higher revenue requirement, so AEP West is using the separate return method, and AEP West fails to properly assign the benefits of a consolidated tax return applicable to the AEP West transmission function to AEP West's transmission customers.[22]

b. AEP West June 21 Answer

26. AEP West asserts that IRS guidance and customer concerns regarding affiliate formula rates caused AEP West to reevaluate its treatment of net operating losses and net operating loss carryforwards, and to ultimately implement a stand-alone allocation

[17] *Id.* at 13-14.

[18] *Id.*, Nicholas Aff. at 28.

[19] Nicholas Aff. at 76.

[20] *Id.* at 22.

[21] *Id.* at 77.

[22] Formal Challenge and Complaint at 14.

method for the 2022 Annual Update.[23] According to AEP West, AEP requested private letter rulings from the IRS about the IRS's normalization rules as they relate to net operating loss carryforwards for SWEPCO and PSO, as well as its Indiana Michigan Power Company subsidiary.[24] AEP West asserts that the IRS has ruled in several private letter rulings, including those sought by AEP, that in order to avoid a violation of the IRS normalization requirements, it is necessary to include in rate base the deferred tax asset resulting from a net operating loss, given the inclusion in rate base of the full amount of the deferred tax liability resulting from accelerated depreciation. AEP West asserts that the IRS's rulings did not specifically address tax sharing payments, and for that reason, AEP West determined that net operating loss carryforwards should be included in ratemaking without reference to any inter-company tax payments.[25]

27. AEP West also states that the IRS held that the inclusion in rate base of a portion of the deferred tax asset that is less than the amount attributable to accelerated depreciation would violate the IRS normalization requirements. AEP West argues that the approach advocated by Joint Customers reduces the deferred tax asset of a utility joining in the filing of a consolidated tax return on account of its losses used by affiliates, which would likely result in a deferred tax asset that is less than the amount of the deferred tax liability that is attributable to accelerated tax depreciation. As such, AEP West contends that Joint Customers' approach would likely lead to an IRS normalization violation, which would result in the loss of AEP West's ability to use accelerated depreciation on all of its public utility property.[26]

28. AEP West contends that its net operating loss and net operating loss carryforward calculations are not done as if each AEP West company filed a separate return. AEP West argues that, rather, AEP West focused on the activity of the entity itself and not activities of others in the affiliated group, which is consistent with *Columbia Gulf*. AEP West claims that Joint Customers focus on inter-company tax payments to determine the appropriate net operating loss carryforward, which AEP West argues is an approach rejected by the Commission.[27]

---

[23] AEP West June 21 Answer at 2, 10-11.

[24] *Id.* at 23-25. *See also id.*, Hodgson Aff. at 27.

[25] *Id.* at 10-11.

[26] *Id.* at 22-26.

[27] *Id.* at 4-5.

29. According to AEP West, Worksheet C requires AEP West to input the total year end balances of certain ADIT amounts as stated on the FERC Form No. 1 and to adjust those amounts based on several allocation factors to determine the amount of ADIT included in the rate base calculation. AEP West claims that Worksheets C-1 and C-2 provide line-item detail of deferrals represented in each ADIT account and allow for the addition and removal of individual ADIT timing differences as applicable each year. AEP West asserts that it reflects a stand-alone net operating loss by allocating a timing difference associated with a net operating loss on Worksheets C-1 and C-2 while excluding an offsetting difference for the stand-alone net operating loss on the same worksheet.[28]

30. AEP West explains its approach for implementing the stand-alone allocation method. AEP West claims that it looks beyond the individual tax returns of each of the AEP West companies, and instead derives the taxable income of the utility from all Commission-jurisdictional revenues and the cost of service of the individual utility. AEP West asserts that it excludes non-jurisdictional items that would be included in a separate return. AEP West states that certain of the AEP West companies have business activities that are not Commission-jurisdictional, and that those amounts are removed when calculating the appropriate net operating loss and net operating loss carryover for a particular company.[29] AEP West also asserts that it used amounts from each AEP West company's financial statements in the 2022 annual rate projection and 2021 rate true-up because no revenues or expenses from an affiliate were included in the revenue requirement for an AEP West company.[30]

31. According to AEP West, in applying the stand-alone allocation methodology, one must identify the taxable income or loss generated by the relevant revenues and expenses in the Commission-jurisdictional cost of service, which is referred to as the benefits and burdens test. AEP West argues that if the taxable income results in a net operating loss

[28] *Id.* at 9-10.

[29] AEP West asserts that, for example, SWEPCO operates Dolet Hills Lignite Company (Dolet Hills), which is a non-jurisdictional business activity whose costs are not paid by transmission customers. AEP West states that to the extent Dolet Hills impacts SWEPCO's tax liability in a particular year, that impact would not be considered in deriving the appropriate stand-alone net operating loss and net operating loss carryover (which it would include in a separate return method). *Id.* at 17-18.

[30] Using the Dolet Hills example, AEP West claims that, if SWEPCO has no gains or losses, outside of a $100 loss at Dolet Hills, there would be no net operating loss under AEP West's stand-alone allocation method because the $100 loss related to non-jurisdictional activities. *Id.* at 18-19.

carryforward, then it is appropriate to include the balances for net operating loss carryforwards in Account 190.[31]

32. AEP West argues that Joint Customers seem to suggest that each individual AEP West company should consider the tax sharing payments made or received by the company under AEP's tax sharing agreement. AEP West argues that such an approach has been rejected by the Commission. AEP West contends that, as the Commission explained in *Columbia Gulf*, such tax sharing payments should not be considered because "to treat the amounts allocated to members for tax purposes as the member's actual tax costs for ratemaking purposes would mean the tax allowance of a regulated member of an affiliated group would be determined by the election of the group."[32] According to AEP West, the court explained further that because "the internal allocation in no way affects rates, there is, under the Commission's test, no burden entitling ratepayers to corresponding tax benefits."[33] AEP West contends that under the Commission's benefits and burdens test, tax sharing payments are not a benefit to customers.[34]

33. In addition, AEP West contends that the IRS normalization rules do not consider inter-company tax sharing payments as advocated by Joint Customers because the Internal Revenue Code does not require tax sharing payments or a particular methodology for tax sharing payments, or provide the consequences of tax sharing payments. AEP West argues that to rely on those payments to determine the appropriate net operating loss and net operating loss carryforward on a stand-alone basis would be inconsistent with the IRS normalization requirements and would likely lead to a normalization violation.[35]

c. Joint Customers July 11 Answer

34. Joint Customers state that they do not dispute AEP West's removal of ADIT amounts reported in the FERC Form No. 1 associated with revenues and expenses of non-Commission-jurisdictional affiliates that are excluded from AEP West's transmission revenue requirement. Joint Customers contend that they dispute AEP West's treatment of net operating loss carryforwards for ADIT that AEP West includes as ratemaking-only

---

[31] *Id.* at 19-21 (citing *Kern River Gas Transmission Co.*, Opinion No. 486, 117 FERC ¶ 61,077, at P 230 (2006) (*Kern River*)).

[32] *Id.* at 22 (citing *Columbia Gulf*, 23 FERC at 61,864).

[33] *Id.* (citing *City of Charlottesville v. FERC*, 774 F.2d at 1218).

[34] *Id.* at 22-23.

[35] *Id.* at 23-26.

net operating loss adjustments to Worksheets C-1 and C-2 that reduce the total ADIT balances that are deducted from AEP West's rate base calculation (and thereby increase rate base) and that reduce the "Excess/(Deficient) Deferred Income Taxes" input in the income tax allowance calculation of the transmission revenue requirement.[36]

35. Joint Customers claim that AEP West's net operating loss carryforward ADIT ratemaking adjustments do not exist on AEP West's accounting books, have already been realized through inclusion in AEP's consolidated tax return, and have resulted in tax benefits that should have accrued to the benefit of ratepaying customers. Joint Customers argue that whatever AEP West may be doing for non-Commission jurisdictional affiliates, its change in method for computing net operating loss carryforwards for ADIT is a prohibited separate return method.[37]

36. Joint Customers allege that the primary issue is not whether there has been an inter-company cash payment for the AEP consolidated tax return's use of the AEP West net operating loss carryforward. Rather, the issue is whether the income tax savings and benefits have been realized from tax deductions funded by AEP West's transmission customers through the inclusion and recovery of the related expenses in transmission rates. Joint Customers contend that the cash payments are evidence that the net operating loss carryforwards have been utilized and the tax benefits realized by the AEP parent and its affiliated members from their filing of consolidated tax returns. Joint Customers argue that AEP West does not dispute that AEP and its affiliated members had fully used all of AEP West's federal net operating loss carryforwards on AEP's consolidated tax return as of December 31, 2020, and that AEP West therefore realized the full tax savings benefits of AEP West's accelerated depreciation and all other tax deductions as of that date.[38]

37. Joint Customers argue that AEP West ignores the utilization and realization of its net operating loss carryforwards on the AEP consolidated tax return. Joint Customers contend that, for ratemaking purposes only, AEP West adds net operating loss carryforwards for ADIT adjustments to its rate base, thereby increasing rate base for income tax benefits that have been realized by the AEP consolidated tax group on AEP consolidated tax returns. Joint Customers argue that because the income tax benefit of the net operating loss carryforwards has been realized, the future tax benefit no longer exists, and no associated deferred tax asset is recorded on AEP West's books.[39]

---

[36] Joint Customers July 11 Answer at 6-7.

[37] *Id.* at 7.

[38] *Id.* at 7-8, 12-13.

[39] *Id.* at 8-9.

38. Joint Customers contend that under the Commission's stand-alone allocation method, tax sharing payments AEP West may receive from other affiliates must be considered in evaluating the appropriate net operating loss for ratemaking. Joint Customers assert that in Opinion No. 375, the Commission found that the tax savings realized from the filing of a consolidated tax return by parent company Entergy Corporation, Inc. (Entergy), which fully utilized its subsidiary System Energy Resources, Inc.'s (System Energy) interest deductions, should be fully assigned to System Energy's ratepayers.[40]

39. Joint Customers also contend that in Opinion No. 581, the Commission stated that ADIT calculations shall be based upon amounts claimed in an entity's actual tax return and that, consistent with Order No. 144, ratepayers are entitled to the tax benefits realized on the entity's actual filed returns for costs borne by customers.[41] In addition, Joint Customers contend that the Commission has found that, when an ADIT liability was settled and paid in the filed income tax return, that ADIT liability should be removed from rate base because the deferred tax liability became due and payable and was already paid to the IRS.[42] Further, Joint Customers argue that while it is appropriate to include the balance for net operating loss carryforwards in Account 190 for booked and existing net operating loss carryforwards, the net operating loss carryforwards here were fully used and realized by AEP—the parent company—and its member affiliates in their consolidated tax return as of December 31, 2020.[43]

40. In addition, Joint Customers argue that AEP West's change in methodology is not required by the Internal Revenue Code, IRS regulations, or private letter rulings. According to Joint Customers, the private letter rulings cited by AEP West do not address its proposal and do not dictate what items should be included in Commission-jurisdictional rates. Further, Joint Customers contend that AEP West has already realized the income tax saving benefits of accelerated depreciation to the extent the net operating losses caused by the accelerated depreciation have been included in the AEP consolidated tax return and were used to reduce the consolidated taxable income of the AEP parent company and its affiliate members. Joint Customers contend that once the net operating

---

[40] *Id.* at 10 (citing *Sys. Energy Res., Inc.*, Opinion No. 375, 60 FERC ¶ 61,131, at 61,470-77 (*SERI*) (applying Opinion No. 173 to System Energy), *order on reh'g*, 61 FERC ¶ 61,031 (1992)).

[41] *Id.* at 10-11 (citing *La. Pub. Serv. Comm'n v. Sys. Energy Res., Inc.*, Opinion No. 581, 181 FERC ¶ 61,243, at P 312 (2022) (*Louisiana PSC v. SERI*)).

[42] *Id.* at 11-12 (citing *Koch Gateway Pipeline Co*., 74 FERC ¶ 61,088, at 61,275-76 (*Koch Gateway*), *reh'g denied*, 75 FERC ¶ 61,132, at 61,463-64 (1996)).

[43] *Id.* at 12 (citing *Kern River*, 117 FERC ¶ 61,077 at P 230).

loss sourced by AEP West's accelerated tax depreciation has been included and utilized in the consolidated income tax returns, the normalization concern in the referenced private letter rulings has been resolved.[44]

41. Joint Customers allege that the private letter rulings cited by AEP West pertain to the inclusion in rate base of taxes that are in fact deferred. Joint Customers argue that AEP West's net operating loss ADIT is no longer deferred once it is included in a tax return, offsets taxable income, and the tax saving benefits are received by the AEP consolidated tax group. Joint Customers also argue that the tax benefits of the net operating loss that have been fully utilized and realized on the AEP consolidated tax return should not be collected from ratepayers but returned to ratepayers under the Commission's benefits and burdens test to the extent ratepayers paid for the underlying costs in rates.[45]

d. AEP West July 26 Answer

42. AEP West contends that the precedent invoked by Joint Customers either supports AEP West or is irrelevant. AEP West argues that *City of Charlottesville* and *Columbia Gulf*'s finding that the stand-alone allocation method removes Commission non-jurisdictional affiliate gains or losses from the determination of a jurisdictional utility's net operating losses demonstrates the impropriety of Joint Customers' approach. AEP West alleges that the Commission, in *SERI*, rejected a theory upon which Joint Customers' argument depends, which is that the tax benefit is determined by or limited to the amount of cash received by the utility under its tax allocation agreement.[46] AEP West argues that *Louisiana PSC v. SERI* concerned when uncertain tax positions should be recognized in the utility's ADIT calculations. AEP West contends that in *Kern River* the Commission focused on the impact of the net operating loss on the company on a stand-alone basis, not the impact of the net operating loss on its corporate parent.[47]

e. Commission Determination

43. We grant Joint Customers' Formal Challenge as to the disputed ADIT inputs to the Formula Rate adjustments. We find that AEP West fails to demonstrate the justness

---

[44] *Id.* at 23-25.

[45] *Id.* at 25-27.

[46] AEP West July 26 Answer at 6 (citing *SERI*, 60 FERC at 61,475).

[47] *Id.* at 7.

and reasonableness of its adjustments to its ADIT inputs to rate base for the 2021 rate year to implement its new method for allocating net operating loss carryforward ADIT.

44. AEP West's ADIT balances are inputs to its Formula Rate, which ultimately determine AEP West's transmission rate for the 2021 rate year. To implement its new methodology for allocating net operating loss carryforward ADIT, AEP West performed adjustments to its ADIT allocations on its ADIT Worksheets C-1 and C-2, which provide for itemization of amounts in each ADIT account and allocation of each item for inclusion in the ADIT inputs to rate base in the Formula Rate. Under AEP West's Formula Rate, AEP West bears the burden of demonstrating the justness and reasonableness of the rate in any formal challenge proceeding.[48] Therefore, while Worksheets C-1 and C-2 provide AEP West flexibility with respect to how ADIT amounts are itemized and individual items are allocated, AEP West bears the burden to demonstrate that the allocation of ADIT for inclusion in the ADIT inputs to rate base in the Formula Rate are just and reasonable. As discussed below, we find that AEP West's new methodology for allocating net operating loss carryforward ADIT for each of the AEP West companies for ADIT inputs to rate base in the Formula Rate does not satisfy the Commission's benefits and burdens test, which assigns to the utility's ratepayers those tax benefits attributable to expenses borne by the utility's ratepayers. Therefore, we find AEP West's adjustments to its ADIT inputs to rate base for the 2021 rate year to implement its new method for allocating net operating loss carryforward ADIT result in unjust and unreasonable allocation of ADIT for its ADIT inputs to rate base in the Formula Rate.[49]

45. AEP West states that it utilizes the stand-alone allocation method, but as discussed below, its methodology fails to account for the tax benefits it has utilized. Under the stand-alone method, the utility files consolidated tax returns, which expressly takes into account the tax reducing benefits the consolidated group realizes by filing such a return. For example, when an individual utility has a net operating loss carryforward, it is generally added to rate base. When the utility is part of a corporate family, the utility may receive the benefit of the tax loss realized on a consolidated tax return, resulting in a decrease in rate base, thus, benefiting the customers. A stand-alone allocation method, in effect, looks beneath the single consolidated tax liability and analyzes each of the deductions used to reduce the group's tax liability to determine the deductions applicable to each jurisdictional service. The stand-alone allocation method then allocates to each

---

[48] SPP, OATT, attach. H, add. 4, pt. 2, § 5(f); SPP, OATT, attach. H, add. 12, pt. 2, § 5(f) (stating that "In any Formal Challenge proceeding concerning a given year's Annual Update . . . AEP shall demonstrate the justness and reasonableness of the rate resulting from its application of the Formula Rate.").

[49] *See City of Charlottesville v. FERC*, 774 F.2d at 1217.

jurisdictional service those deductions that were generated by expenses incurred in providing that service.[50]

46. By contrast, the Commission has explained that a separate return policy ignores the consolidated tax return and reflects in the tax allowance none of the tax reducing benefits the group realizes from filing a consolidated tax return.[51] As the Commission explained in *Columbia Gulf*, a separate return tax calculation is not the same as a stand-alone tax calculation.[52] AEP West has failed to account for the tax benefits related to the AEP consolidated federal income tax return and has not appropriately included those benefits when calculating its net operating loss carryforward for ratemaking purposes.[53] That is, AEP West failed to consider reducing its net operating losses with its proportionate share of those tax benefits, resulting in inappropriate ADIT input adjustments that increase transmission rates.[54]

47. AEP West evaluates the federal income tax results of each AEP West company separately by determining the income and expenses that are considered in the ratemaking of an AEP West company, but excluding tax benefits realized on a consolidated basis.[55] As such, AEP West retains net operating loss carryforwards in its rates as if the tax benefits realized from filing on a consolidated basis did not occur, and thus it inappropriately includes ratemaking adjustments in its 2022 Annual Update that ultimately increase its transmission rates. Therefore, we find that AEP West fails to demonstrate that its proposed method results in allocation of ADIT for its ADIT inputs to

---

[50] *Id.* at 61,852-53.

[51] *Columbia Gulf*, 23 FERC at 61,852.

[52] *Columbia Gulf*, 23 FERC at 61,852-53.

[53] *See* AEP West June 21 Answer at 10-12, 21-23. *See also id.*, Hodgson Aff. at 9-21.

[54] ADIT balances recorded in Accounts 281 (ADIT—Accelerated Amortization Property), 282 (ADIT—Other Property), and 283 (ADIT—Other) are subtracted from rate base to reflect the fact that that this portion of rate base is not financed by investor funds. Opinion No. 144, FERC Stats. & Regs. ¶ 30,254, at 31,539 (1981), *reh'g denied*, Order No. 144-A, FERC Stats. &Regs. ¶ 30,340, *aff'd, Pub. Sys. v. FERC*, 709 F.2d 73.

[55] *See* AEP West June 21 Answer at 11-12, 17-18.

rate base in the Formula Rate that provides transmission customers tax benefits in proportion to their burdens.[56]

48. Further, in *SERI*, the Commission found that the tax savings realized from the filing of a consolidated tax return by Entergy, which fully utilized its subsidiary, System Energy's interest deductions, must be fully assigned to System Energy's ratepayers. Specifically, the Commission applied its benefits and burdens test from *Columbia Gulf* and affirmed that tax benefits must follow burdens.[57] The Commission found that System Energy's ratepayers bear the interest expense used as a tax deduction on the consolidated return; therefore, System Energy's ratepayers must receive the tax benefit of those interest deductions.[58] That is, under the benefits and burdens test, if deductions based on costs included in jurisdictional company rates are used against income generated by affiliates to reduce tax liability on the consolidated return, the associated benefit of the deduction must be included in jurisdictional rates. Here, like System Energy, the AEP West Companies' ratepayers should receive the full benefit of the tax savings realized by the AEP West companies based on costs included in jurisdictional rates. Instead, AEP West denies its ratepayers those benefits, which is inconsistent with the benefits and burdens test.

49. Further, the Commission determined in *SERI* that the tax sharing agreements among affiliates did not follow the Commission's benefits and burdens test, and therefore the tax sharing payments under those agreements were not determinative in setting the taxes reflected in ratemaking.[59] That is, the threshold issue in the benefits and burdens test, is whether ratepayers are given the benefit of tax reduction resulting from the deductible expenses in their rates.[60] As discussed above, we find that AEP West's rate adjustments do not meet the Commission's benefits and burdens test.

50. Moreover, AEP West does not dispute that each AEP West company had fully utilized all of its federal net operating loss carryforwards on the AEP consolidated tax return as of December 31, 2020. In other words, AEP West had used up its net operating

---

[56] *See Columbia Gulf*, 23 FERC at 61,861.

[57] *SERI*, 60 FERC at 61,475.

[58] *Id.* at 61,476.

[59] *Id.* at 61,475.

[60] *Id.*

loss carryforwards as of December 31, 2020,[61] therefore no net operating loss ratemaking adjustments for the 2021 rate year are necessary or appropriate. Likewise, we note that AEP West's reliance on IRS private letter rulings is misplaced because the private letter rulings merely address the inclusion of ADIT balances in rate base and do not provide guidance on how benefits already realized through consolidated tax returns are to be allocated and reflected in ADIT inputs to utility transmission service rates adjustments.

51. Accordingly, we direct AEP West to submit a compliance filing, within 60 days of the date of this order, detailing all of the calculations of the Formula Rate billings for the 2022 Annual Update, revised to reflect the exclusion of the disputed input net operating loss adjustments, as well as calculations of interest. In accordance with section 6 of the Protocols, we also direct AEP West to provide refunds with interest on all amounts improperly collected for the 2021 rate year, and for such refunds to "be reflected as adjustments in the Annual Update for the next Rate Year."[62]

52. Finally, we note that Joint Customers also argue that AEP West's change in methodology violates the filed rate, Order No. 864,[63] and the 2019 Settlement Agreement. We agree with Joint Customers that AEP West fails to support the allocation of ADIT for inclusion in the ADIT inputs to rate base in the Formula Rate for the 2021 rate year. We therefore need not address whether the term "Company Records" would have permitted this adjustment.

2. Account 928 (Regulatory Commission Expenses)

a. Public Service Commission Fees

i. Formal Challenge

53. Joint Customers argue that AEP West improperly included $436,516 of public service commission fees in Account 928 (Regulatory Commission Expenses).[64]

---

[61] Formal Challenge and Complaint, Nicholas Aff. at 35; Joint Customers July 11 Answer at 7-8.

[62] SPP, OATT, attach. H, add. 4, pt. 2 § 6; SPP, OATT, attach. H, add. 12, pt. 2 § 6.

[63] *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g & clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

[64] Account 928 includes all expenses incurred by the utility in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees

According to Joint Customers, AEP West incurred $2,234,880 in public service commission expenses for SWEPCO, and then AEP West applied a transmission allocator to that amount, resulting in a transmission specific expense of $480,724. Joint Customers claim that, because SWEPCO incurred $46,208 in FERC annual assessment fees for the 2021 rate year, the remaining amount of $436,516 is associated with public service commission fees.[65]

54. According to Joint Customers, the Commission has required AEP West to record public service commission fees in Account 928 instead of Account 408.1 (Taxes Other Than Income Taxes, Utility Operating Income) and to provide a justification for the amounts recorded in Account 928 pursuant to Note L and column F of Worksheet J of the Formula Rate.[66]

55. Joint Customers allege that AEP West provided an explanation that the public service commission fees are "FERC Annual Assessment/[Public Service Commission] Fees" and that AEP West's explanation fails to provide a meaningful justification to demonstrate how state public service commission fees support transmission customers. Joint Customers also argue that AEP West's generic description is not an adequate justification or a specification of the cost of each formal case.[67]

ii. AEP West June 21 Answer

56. AEP West argues that it properly included public service commission fees in Account 928. According to AEP West, the Commission found that public service commission fees are properly recorded in Account 928 if they are directly assignable or allocable to transmission service. AEP West asserts that, consistent with the Commission's finding in the AEP West 2020 Formal Challenge Order, it now records public service commission fees in Account 928, and in doing so, allocates some of those fees to transmission customers.[68]

---

assessed against the utility for pay and expenses of such commission, its officers, agents, and employees. 18 C.F.R. pt. 101, Balance Sheet Accounts, Account 928, Regulatory commission expenses.

[65] Formal Challenge and Complaint at 23, 29.

[66] *Id.* at 22-23 (citing *Sw. Power Pool, Inc.*, 178 FERC ¶ 61,208 (AEP West 2020 Formal Challenge Order), *order on reh'g*, 180 FERC ¶ 61,161 (2022)).

[67] *Id.* at 23-24.

[68] AEP West June 21 Answer at 32.

57. AEP West asserts that column F of Worksheet J requires AEP West to explain the charges included in Account 928 that are transmission related. AEP West argues that it properly explained that the transmission specific items recorded in Account 928 consisted of "FERC Annual Assessment/[Public Service Commission] Fees." AEP West also alleges that inclusion of the fees in Account 928 and allocation of a portion of those fees to transmission customers is justified because those fees are necessary to provide transmission service in several of the states in which SWEPCO operates. AEP West asserts that SWEPCO must be a public utility to own and operate transmission facilities in Arkansas, Louisiana, and Texas, and is assessed public service commission fees in those states. AEP West claims that a portion of those fees are properly allocated to transmission customers.[69]

58. AEP West states that the fees are allocated using AEP West's gross plant allocation factor, under which transmission customers pay approximately 21% of the total public service commission fees. AEP West argues that a gross plant allocator is reasonable as the public service commission fees in question are assessed to SWEPCO based on its revenues. AEP West asserts that SWEPCO's revenue requirement is based on the costs it incurs to provide electric service, and a large portion of those costs are directly tied to SWEPCO's plant investments.[70]

iii. Joint Customers July 11 Answer

59. Joint Customers claim that AEP West offers no justification for why a gross plant allocator is representative of the degree to which its transmission function comprises public service commission fees. According to Joint Customers, the Commission has found that it would not be reasonable to allocate retail rate case expenses to the wholesale class based on labor ratios.[71] Joint Customers contend that, likewise, it is not reasonable for AEP West to allocate Account 928 expenses based on gross plant ratios.[72]

iv. Commission Determination

60. We deny in part Joint Customers' Formal Challenge as to the disputed public service commission fees and find that more information is needed to determine the amount of these public service commission fees that are directly assignable or allocable

---

[69] *Id.* at 32-33.

[70] *Id.* at 33 (citing Duffy Aff. at 12).

[71] Joint Customers July 11 Answer at 29-30 (citing *S. Cal. Edison Co.*, 56 FERC ¶ 61,003, at 61,021 (1991) (*SoCal Edison*)).

[72] *Id.* at 30.

to transmission service. We disagree with Joint Customers' argument that allocation of public service commission fees to transmission customers under the Formula Rate is, in and of itself, unjust and unreasonable. The Commission has found that public service commission fees should be recorded in Account 928.[73] The Commission also found that the Formula Rate allows for AEP West to recover the transmission specific expenses recorded in Account 928 using a transmission allocator, and the Formula Rate provides that such expenses "will be included in the cost of service only to the extent they are directly assignable or allocable to transmission service" in accordance with Worksheet J.[74]

61. Joint Customers argue that AEP West failed to show that the public service commission expenses are directly assignable or allocable to transmission service. We disagree. AEP West provided an explanation in column F of Worksheet J that the expenses in question are "[Public Service Commission] Fees." AEP West also explains that public service commission fees are necessary to provide transmission service in the states in which SWEPCO operates, including Arkansas, Louisiana, and Texas.[75] However, we agree with Joint Customers that AEP West's explanations do not contain sufficient details to support AEP West's allocation of public service commission fees to the transmission function using a gross plant allocator. Accordingly, we direct AEP West to submit a compliance filing, within 60 days of the date of this order, that either provides additional support for its use of a gross plant allocator or details all of the calculations of the revised Formula Rate billings for the 2022 Annual Update that are made to reflect the exclusion of these expenses, as well as calculations of interest. If AEP West excludes any of these expenses related to public service commission fees, we also direct, in accordance with section 6 of the Protocols, AEP West to provide refunds with interest on all amounts improperly collected for the 2021 rate year, and for such refunds to "be reflected as adjustments in the Annual Update for the next Rate Year."[76] We note that Joint Customers will have the opportunity to review and comment on AEP West's compliance filing.

---

[73] AEP West 2020 Formal Challenge Order, 178 FERC ¶ 61,208 at P 21.

[74] *Id.* P 22. *See also* SPP, OATT, attach. H, add. 4, pt. 1 (8.0.0), Note L ("Expenses reported for these [administrative and general] accounts will be included in the cost of service only to the extent they are directly assignable or allocable to transmission service. Worksheet J allocates these expense items. Account 928 includes Regulatory Commission expenses itemized in FERC Form-1 at page 351, column H.").

[75] AEP West June 21 Answer at 33-34.

[76] SPP, OATT, attach. H, add. 4, pt. 2 § 6; SPP, OATT, attach. H, add. 12, pt. 2 § 6.

b. FERC Annual Assessment Fees

i. Formal Challenge

62. Joint Customers argue that AEP West has improperly included $46,208 of FERC annual assessment fees in Account 928. According to Joint Customers, Note L of the Formula Rate states that FERC assessment fees and annual charges shall not be allocated to transmission.[77]

ii. AEP West June 21 Answer

63. AEP West states that the inclusion of FERC annual assessment fees in Account 928 was an inadvertent error. AEP West asserts that the total amount of FERC annual assessment fees is $46,208 as noted by Joint Customers, but only $9,939 was allocated to transmission customers. AEP West states that "it will remove this amount as part of the true-up process consistent with its Protocols."[78]

iii. Joint Customers July 11 Answer

64. According to Joint Customers, the Protocols state that each input for determining revenue requirements will be taken directly from FERC Form No. 1 or reconcilable to the FERC Form No. 1 by application of clearly identified and supported information. Joint Customers assert that SWEPCO's FERC Form No. 1 for 2021 states that the FERC annual assessment was $1,322, which is contrary to disputed $46,208 amount.[79]

iv. Commission Determination

65. We grant Joint Customers' Formal Challenge as to the disputed FERC annual assessment fees. Note L of the Formula Rate states that FERC annual assessment fees and annual charges shall not be allocated to transmission. AEP West admits that the inclusion of FERC annual assessment fees was an inadvertent error.[80] Accordingly, we direct AEP West to submit a compliance filing, within 60 days of the date of this order, detailing all of the calculations of the revised Formula Rate billings for the 2022 Annual Update that are made to reflect the exclusion of the FERC annual assessment fees, as well as calculations of interest. We also direct, in accordance with section 6 of the Protocols,

---

[77] Formal Challenge and Complaint at 24-25.

[78] AEP West June 21 Answer at 34.

[79] Joint Customers July 11 Answer at 30.

[80] AEP West June 21 Answer at 34.

AEP West to provide refunds with interest on all amounts improperly collected for the 2021 rate year, and for such refunds to "be reflected as adjustments in the Annual Update for the next Rate Year."[81]

c. Retail Rate Case Expenses

i. Formal Challenge

66. Joint Customers contend that AEP West improperly included $637,249 in expenses related to retail rate cases in Account 928 for SWEPCO and PSO. Among those, Joint Customers include $229,424 in expenses associated with SWEPCO's Arkansas and Louisiana state Integrated Resource Planning filings. According to Joint Customers, AEP West incurred $2,945,840 in retail rate case expenses for SWEPCO and PSO, and then AEP West applied a transmission allocator to that amount, resulting in a transmission specific expense of $637,249.[82]

67. Joint Customers argue that AEP West failed to provide justification as to why these expenses are applicable to transmission rates. According to Joint Customers, the Commission has found that it is not appropriate to allocate retail rate case expenses to wholesale customers.[83] Joint Customers argue that wholesale transmission customers should not be allocated retail rate case expenses either directly or through an allocator, as those costs should be borne by the retail ratepayer.[84]

ii. AEP West June 21 Answer

68. AEP West asserts that SWEPCO and PSO are vertically integrated utilities and that some retail rate case expenses are related to all three functions—generation, transmission, and distribution. AEP West states that to determine the amount of expenses that are allocable to transmission service, AEP West uses the amounts recorded to SWEPCO and PSO's transmission functional books, which is the approach that they used to determine what retail rate case expenses were allocated to Account 928.[85]

---

[81] SPP, OATT, attach. H, add. 4, pt. 2 § 6; SPP, OATT, attach. H, add. 12, pt. 2 § 6.

[82] Formal Challenge and Complaint at 25-26, 29.

[83] *Id.* at 26 (citing *SoCal Edison*, 56 FERC at 61,020).

[84] *Id.* at 27.

[85] *Id.* at 34-35.

69. AEP West contends that SWEPCO operates in several states and must justify its transmission development through varying cases at several state public service commissions. AEP West argues that several of the expenses challenged by Joint Customers are expenses related to base rate cases during which SWEPCO must demonstrate the prudency of its transmission expenses. AEP West also asserts that SWEPCO files Integrated Resource Plans with its state public service commissions, which requires SWEPCO to assess its transmission system at its own expense. In addition, AEP West argues that Joint Customers ignored AEP West's inclusion of retail rate case amounts in Account 928 where the amounts decreased transmission costs. AEP West asserts that, for example, Joint Customers did not challenge SWEPCO's inclusion of a negative $192,262 expense related to its 2019 Louisiana base case where removal of that credit expense would have resulted in increased transmission rates.[86]

70. AEP West claims that Joint Customers overstate the Commission's findings in *SoCal Edison*. According to AEP West, the Commission found that not all expenses in Account 928 should be allocated between wholesale and retail customers on the basis of labor ratios. AEP West argues that for expenses related to price squeeze litigation, because those expenses were exclusively related to Southern California Edison Company's (SoCal Edison) wholesale operations, the Commission found that the expenses should be directly assigned to wholesale customers.[87] AEP West contends that here, the challenged retail rate case expenses serve a transmission function in part and therefore the inclusion of those expenses in Account 928 was appropriate.[88]

iii. Joint Customers July 11 Answer

71. Joint Customers contend that AEP West allocates percentages that range from 12.2% to 26.2% of the retail rate case costs to transmission. Joint Customers also argue that the Worksheet J requires expenses to be directly assigned to "100% Non-Transmission" in column D and "100% Transmission Specific" in column E. Joint Customers contend that the varying percentage allocations used by AEP West are not 100% one way or the other. Joint Customers also claim that AEP West provides no details as to how it derived its negative $192,262 expense for the 2019 Louisiana base case or why the amount is negative.[89]

---

[86] AEP West June 21 Answer at 35-36.

[87] *Id.* at 36-37 (citing *SoCal Edison*, 56 FERC at 61,021).

[88] *Id.* at 37.

[89] Joint Customers July 11 Answer at 31-32.

72. Joint Customers claim that in *SoCal Edison*, the Commission directly compared the unjustness of allocating expenses to SoCal Edison's retail customers through labor ratios to allocating retail rate case expenses to wholesale customers using labor ratios, as AEP West is doing here through a gross plant allocator. Joint Customers contends that retail rate case expenses are not used and useful in providing wholesale transmission service and should not be included in wholesale transmission service rates.[90]

iv. Commission Determination

73. We deny in part Joint Customers' Formal Challenge as to the disputed retail rate case expenses and find that more information is needed to determine the amount of these expenses that are directly assignable or allocable to transmission service. We disagree with Joint Customers' argument that allocation of retail rate case fees to transmission customers under the Formula Rate is, in and of itself, unjust and unreasonable. The Formula Rate allows for AEP West to recover the transmission specific expenses recorded in Account 928 to the extent that they are directly assignable or allocable to transmission service. AEP West consists of vertically integrated public utilities; therefore, certain expenses are related to each of generation, transmission, and distribution. AEP West is required to address certain aspects of the transmission system as part of its member companies' retail rate case proceedings. Here, AEP West determines the amounts of expenses for each retail rate case that are directly assignable or allocable to transmission and records such amounts to its transmission functional books. To the extent that the amounts of retail rate case expenses AEP West records represent the portion of the expenses directly assignable or allocable to AEP West's member companies' transmission functions, we find AEP West's use of such amounts in the Account 928 input for transmission is consistent with the Formula Rate.

74. Further, we find that *SoCal Edison* is distinguishable from the facts here. In *SoCal Edison*, the regulatory commission expenses at issue were exclusively related to SoCal Edison's wholesale operations, and the Commission found they should therefore be directly assigned to wholesale customers. Accordingly, in *SoCal Edison*, the Commission found that it would not be reasonable to shift to retail customers, using a labor ratio allocator, those exclusively wholesale costs.[91] Here, the Formula Rate variable for the Account 928 input does not distinguish between wholesale and retail regulatory expenses, but only requires that the expenses be directly assignable or allocable to the transmission function,[92] and to the extent the disputed public service

---

[90] *Id.* at 32.

[91] *SoCal Edison*, 56 FERC at 61,020-21.

[92] The ATRR resulting from the Formula Rate is allocated among all transmission customers, including wholesale transmission customers and AEP West's bundled retail

commission and retail rate case expenses at issue here serve a transmission function in part they are assignable or allocable to transmission service under the Formula Rate.

75. We also find that Joint Customers misunderstand the columns in Worksheet J. Contrary to Joint Customers' arguments, AEP West is not allocating 100% of its total retail rate case expenses to transmission customers. In Worksheet J, column C ("2021 Expense") equals the sum of column D ("100% Non-Transmission") plus column E ("100% Transmission Specific"). Retail rate case expenses are included in Column E to the extent that they are directly assignable or allocable to transmission service and those are then allocated 100% to the transmission function.

76. However, we agree with Joint Customers that AEP West's explanations do not contain sufficient details to determine how AEP West determined the percentages of each retail rate case that are directly assignable or allocable to the transmission function. AEP West states that the percentage allocators are based on the amounts recorded on its transmission functional books, but AEP West does not explain how the percentage allocators are determined. Accordingly, we direct AEP West to submit a compliance filing, within 60 days of the date of this order, that either explains the bases for these percentage allocators and why these expenses are directly assignable or allocable to transmission service in accordance with Worksheet J or details all of the calculations of the revised Formula Rate billings for the 2022 Annual Update that are made to reflect the exclusion of these expenses, as well as calculations of interest. As for the subset of these expenses that pertain to Integrated Resource Planning, we direct AEP West to provide more information, including the activities under which transmission-related expenses were incurred, to demonstrate that and to what extent such expenses are allocable to the transmission function. If AEP West excludes any of these expenses related to retail rate cases, in accordance with section 6 of the Protocols, we also direct AEP West to provide refunds with interest on all amounts improperly collected for the 2021 rate year, and for such refunds to "be reflected as adjustments in the Annual Update for the next Rate Year."[93] We note that Joint Customers will have the opportunity to review and comment on AEP West's compliance filing.

---

load.

[93] SPP, OATT, attach. H, add. 4, pt. 2 § 6; SPP, OATT, attach. H, add. 12, pt. 2 § 6.

d. General Regulatory Expenses

i. Formal Challenge

77. Joint Customers argue that AEP West improperly included $65,224 of general regulatory expenses in Account 928. According to Joint Customers, AEP West incurred $132,753 in regulatory commission expenses for SWEPCO and PSO, and then AEP West applied an allocator to that amount, resulting in a transmission specific expense of $65,224. AEP West argues that the expenses do not appear to be related to formal cases and therefore should not be recorded to Account 928.[94]

ii. AEP West June 21 Answer

78. AEP West argues that it does not include general regulatory expenses in Account 928. AEP West asserts that $44,216 of the expenses identified by Joint Customers are labeled "Trans Formula Rate Updates-W" and "to accumulate [AEP] costs to align all work associated with managing the protocols and formula rates of the west operating companies and west companies," which are associated with the preparation of the Annual Update. AEP West claims that the remaining costs are appropriately recorded to Account 928 due to the vertically integrated structure of AEP West.[95]

iii. Joint Customers July 11 Answer

79. Joint Customers argue that $44,216 of the expenses should be set for hearing and settlement judge procedures and that the remaining costs are unjustified.[96]

iv. Commission Determination

80. We deny in part Joint Customers' Formal Challenge as to the disputed general regulatory expenses and find that more information is needed to determine whether these expenses are directly assignable or allocable to transmission service. Joint Customers argue that AEP West failed to show that the disputed general regulatory expenses are directly assignable or allocable to transmission service. We agree with Joint Customers with respect to $21,008 in general regulatory expenses of the $65,224 total and disagree with Joint Customers for the remaining $44,216 in general regulatory expenses. Column F of Worksheet J requires AEP West to provide an explanation of transmission specific

---

[94] Formal Challenge and Complaint at 28-29.

[95] AEP West June 21 Answer at 37 (citing Duffy Affidavit at 15).

[96] Joint Customers July 11 Answer at 33.

items. Here, AEP West provided an explanation of "Regulatory Activity-All Reg OpCos" for a line-item entry in the amount of $615 for SWEPCO. AEP West also provided the following explanations for four five line-item entries for PSO: (1) "Misc" for $7,089; (2) "Reg/Leg ActWest Oper Co.'s" for $808; (3) "Activity not associated with a project" for $416; (4) "Misc. Filing" for $3,239; and (5) "Federal and/or State Regulatory and Legislative Activities" for $8,841. AEP West claims that recording these expenses to Account 928 is appropriate and an allocation is appropriate to transmission due to the vertically integrated structure of AEP West.[97]

81. We find that AEP West's explanations do not contain sufficient details to show that the expenses are directly assignable or allocable to transmission service. Accordingly, we direct AEP West to submit a compliance filing, within 60 days of the date of this order, that either explains how these expenses are directly assignable or allocable to transmission service in accordance with Worksheet J or details all of the calculations of the revised Formula Rate billings for the 2022 Annual Update that are made to reflect the exclusion of these expenses, as well as calculations of interest. If AEP West excludes these expenses, we also direct, in accordance with section 6 of the Protocols, AEP West to provide refunds with interest on all amounts improperly collected for the 2021 rate year, and for such refunds to "be reflected as adjustments in the Annual Update for the next Rate Year."[98] We note that Joint Customers will have the opportunity to review and comment on AEP West's compliance filing.

82. For the remaining line-item entries, AEP West provided explanations that the expenses are related to the Annual Update, which is a proceeding pending before the Commission. We find that AEP West's explanations contain sufficient details to show that the expenses are directly assignable or allocable to transmission service. Because AEP West has shown that the remaining disputed general regulatory expenses are directly assignable or allocable to transmission service, we find that there are no disputed issues of material fact to resolve and therefore decline to set these expenses for hearing and settlement judge procedures.

3. Complaint

a. Joint Customers Complaint

83. Joint Customers state that, if for any reason the Commission finds that Joint Customers' Formal Challenge is outside the scope reserved for formal challenges under the Formula Rate, then the Commission should evaluate AEP West's Formula Rate under

---

[97] AEP West June 21 Answer at 37.

[98] SPP, OATT, attach. H, add. 4, pt. 2 § 6; SPP, OATT, attach. H, add. 12, pt. 2 § 6.

FPA section 206.[99] Joint Customers request that the Commission issue an order that (1) prohibits AEP West from using the separate return method for net operating loss carryforwards ADIT; (2) prohibits AEP West from including inappropriate expenses in the Account 928 formula rate inputs; and (3) requires AEP West to issue refunds, with interest, for all overcharges from the inception of the violations of the Formula Rate.[100]

b. AEP West Answer

84. AEP West argues that the Commission should dismiss the Complaint as procedurally invalid and unsupported because it does not meet the requirements of FPA section 206 and the Commission's regulations. AEP West argues that Joint Customers fail to identify any action or inaction that is the subject of the Complaint and for failing to identify what aspect of the Formula Rate that Joint Customers contend is unjust and unreasonable.[101]

c. Joint Customers Answer

85. According to Joint Customers, under section 206 of the Commission's regulations,[102] a complaint must clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements and explain how the action or inaction violates applicable statutory standards or regulatory requirements. Joint Customers allege that its Complaint enumerates which of AEP West's actions violate FPA section 206. Joint Customers also argue that the Complaint specifies the remedies it seeks.[103]

d. AEP West July 26 Answer

86. AEP West argues that the Commission has required that a complaint be made in a separate pleading, and not included in other filings such as a protest. AEP West contends that, where a party has improperly coupled its complaint with its formal challenge, the

---

[99] Formal Challenge and Complaint at 33.

[100] *Id.* at 30.

[101] AEP West June 21 Answer at 38-39.

[102] 18 C.F.R. § 385.206.

[103] Joint Customers July 11 Answer at 35.

Commission will dismiss the complaint and that the Commission should follow that precedent here.[104]

e. Joint Customers August 10 Answer

87. Joint Customers argue that no provisions in the FPA nor the Commission's regulations bar coupling a formal challenge to a formula rate with a complaint directed at the formula rate. Joint Customers also argue that, in *Michigan Electric*, the Commission dismissed a formal challenge because the challenger did not first file an informal challenge as required by the formula rate protocols in that proceeding. Joint Customers assert that, in that context, the Commission dismissed the complaint without prejudice to refiling.[105] In addition, Joint Customers argue that the Commission has allowed a formula rate customer to couple its formal challenge with a complaint.[106]

88. Joint Customers contend that its Formal Challenge and Complaint were filed and docketed simultaneously, which provides notice to all interested parties. Joint Customers also allege that it would promote administrative efficiency to allow the Formal Challenge to be paired with the Complaint because the facts and arguments overlap.[107]

f. Commission Determination

89. Joint Customers request that the Commission evaluate AEP West's Formula Rate under FPA section 206 if the Commission finds that Joint Customers' Formal Challenge is outside the scope reserved for formal challenges under the Formula Rate. The parties do not dispute that Joint Customers' Formal Challenge is within the scope reserved for formal challenges under the Formal Rate. We agree. As such, we need not address the alternative Complaint as it raises the same arguments as in the Formal Challenge.

<u>The Commission orders</u>:

(A) Joint Customers' Formal Challenge is hereby granted in part and denied in part, as discussed in the body of this order.

---

[104] AEP West July 25 Answer at 16 (citing *Mich. Elec. Transmission Co., LLC*, 156 FERC ¶ 61,026, at P 11 (2016) (*Michigan Electric*)).

[105] Joint Customers August 10 Answer at 2-3.

[106] *Id.* at 3 (citing *Kan. Elec. Power Coop., Inc. v. Evergy Kan. Cent., Inc.*, 175 FERC ¶ 61,044 (2021)).

[107] *Id.* at 3-4.

(B) AEP West is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.